IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLAGTE JURISDICTION

WRIT PETITION NO. 3230 OF 2006.

The President/Secretary
Daruwala Education Society
Pune .. Petitioner

V/s

The presiding Officer
School Tribunal Pune,
Region Pune and others. .. Respondents

Mr. Chandrakant Bidkar for the petitioner.

CORAM : DR. D.Y. CHANDRACHUD, J.

DATE : 30TH JUNE, 2006.

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. An appeal was filed before the School Tribunal by the 2nd respondent against the termination of his services. The contention of the 2nd respondent is that since the academic year 1995, he was appointed as an Assistant Teacher and he was engaged to teach the subject of Physical Education. The services of the 2nd respondent as alleged were terminated after 4 years of his service. Without filing its written statement, the Management filed an application raising preliminary issues on the maintainability of the appeal. According to the Management the 2nd respondent was appointed as a Coach and the appeal was not maintainable. The

application was rejected by the School Tribunal against which the petitioner filed a petition before this Court.

2. A learned Single Judge (Mr. Justice B.H. Marlapalle) by his order dated 5th April, 2005 dismissed the petition. The learned Single Judge observed that the 2nd respondent holds the degree of B.P.Ed and an M.P.Ed and therefore, he is qualified to be appointed as an Assistant Teacher in Physical Education. It was held that the order of the Tribunal did not call for any interference in a petition under Article 227 of the Constitution of India. However the learned Single Judge directed that if the Management filed its written statement and impleaded the Education Officer, who is a necessary party and the Education Officer filed his reply, the Tribunal may consider the preliminary issue as regards the maintainability of the appeal.

3. The Tribunal, at this stage, has noted that all the issues arising in the appeal will be taken up fully at the hearing of the appeal. Prima facie however, it appears from the written statement of the Education Officer of the Zilla Parishad Pune, Exh.24 that the 2nd respondent was appointed as a Physical Education Teacher

since 19th July, 2005 and he continued to work during the years 1996 -97 and 1997-98 in the school, for a period for more than two years. The Tribunal held that prima facie, the record shows that the 2nd respondent had worked as an Assistant Teacher in Physical Education.

4. At this stage, particularly having regard to the earlier order of this Court the order of the Tribunal rejecting the application does not call for any interference in a petition under Article 227 of the Constitution of India. However, while disposing of the petition it is clarified that the Tribunal will decide all the issues which arise in the appeal upon an evaluation of the questions of fact and law that arise. The observations in the present order will not preclude the Tribunal from deciding all the issues at the final hearing of the appeal.

5. The Petition is disposed of accordingly.

(DR. D.Y. CHANDRACHUD, J.)